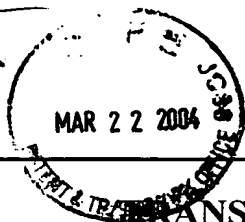


Image

1653



<b>TRANSMITTAL FORM</b> (to be used for all correspondence after initial filing)	Application Number	09/825,414	
	Filing Date	April 3, 2001	
	First Named Inventor	Collmer et al.	
	Group Art Unit	1653	
	Examiner Name	R. Wax	
Total Number of Pages in This Submission	3	Attorney Docket Number	19603/3243 (CRF D-2601C)

ENCLOSURES (check all that apply)		
<input type="checkbox"/> Fee Transmittal Form <input type="checkbox"/> Fee Attached <input type="checkbox"/> Amendment / Reply <input type="checkbox"/> After Final <input type="checkbox"/> Affidavits/declaration(s) <input type="checkbox"/> Extension of Time Request <input type="checkbox"/> Express Abandonment Request <input type="checkbox"/> Information Disclosure Statement <input type="checkbox"/> Certified Copy of Priority Document(s) <input type="checkbox"/> Response to Missing Parts/ Incomplete Application <input type="checkbox"/> A copy of the Notice to Missing Parts under 37 CFR 1.52 or 1.53	<input type="checkbox"/> Assignment Papers (for an Application) <input type="checkbox"/> Drawing(s) <input type="checkbox"/> Declaration and Power of Attorney <input type="checkbox"/> Licensing-related Papers <input type="checkbox"/> Petition <input type="checkbox"/> Petition to Convert to a Provisional Application <input type="checkbox"/> Power of Attorney, Revocation Change of Correspondence Address <input type="checkbox"/> Terminal Disclaimer <input type="checkbox"/> Request for Refund <input type="checkbox"/> CD, Number of CD(s) _____	<input type="checkbox"/> After Allowance Communication to Group <input type="checkbox"/> Appeal Communication to Board of Appeals and Interferences <input type="checkbox"/> Appeal Communication to Group (Appeal Notice, Brief, Reply Brief) <input type="checkbox"/> Proprietary Information <input type="checkbox"/> Status Letter <input type="checkbox"/> Application Data Sheet <input type="checkbox"/> Request for Corrected Filing Receipt with Enclosures <input checked="" type="checkbox"/> A self-addressed, prepaid postcard for acknowledging receipt <input type="checkbox"/> Other Enclosure(s) (please identify below): <input checked="" type="checkbox"/> Response Under 37 C.F.R. § 1.111
Remarks		<input checked="" type="checkbox"/> The Commissioner is hereby authorized to charge any additional fees required or credit any overpayments to Deposit Account No. 14-1138 for the above identified docket number.

SIGNATURE OF APPLICANT, ATTORNEY, OR AGENT	
Firm or Individual name	Edwin V. Merkel Nixon Peabody LLP Clinton Square, P.O. Box 31051 Rochester, New York 14603-1051 Telephone: (585) 263-1128 Fax: (585) 263-1600
Signature	 Registration No. 40,087
Date	

CERTIFICATE OF MAILING OR TRANSMISSION [37 CFR 1.8(a)]	
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<input type="checkbox"/> transmitted by facsimile on the date shown below to the United States Patent and Trademark Office at (703) _____	
3/18/04 Date	 Signature Jane C. Wirszyka Typed or printed name



PATENT  
Docket No.: 19603/3243 (CRF D-2601C)

UNITED STATES PATENT AND TRADEMARK OFFICE

Applicants	:	Collmer et al.	)	Examiner:
			)	R. Wax
Serial No.	:	09/825,414	)	
			)	Art Unit:
Cnfrm. No.	:	2043	)	1653
			)	
Filed	:	April 3, 2001	)	
			)	
For	:	DNA MOLECULES AND POLYPEPTIDES OF	)	
		<i>PSEUDOMONAS SYRINGAE</i> HRP	)	
		PATHOGENICITY ISLAND AND THEIR	)	
		USES	)	

**RESPONSE UNDER 37 C.F.R. § 1.111**

Mail Stop Non-Fee Amendment  
Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

Dear Sir:

In response to the March 3, 2004, office action, reconsideration of the outstanding office action is respectfully requested.

Initially, applicants would like to thank Examiner Wax for the courtesy extended to applicants' undersigned representative during the telephone conferences of February 18 and March 12, 2004. The substance of the first interview is summarized in the outstanding office action. The substance of the second interview is summarized below.

The rejection of claims 7-9 and 38-45 under 35 U.S.C. § 102(b) as anticipated by Charkowski et al., "The *Pseudomonas syringae* pv. tomato HrpW Protein Has Domains Similar to Harpins and Pectate Lyases and Can Elicit the Plant Hypersensitive Response and Bind to Pectate," *J. Bacteriol.* 180(19):5211-5217 (1998) ("Charkowski") is respectfully traversed.

Charkowski relates to the hypersensitive response elicitor protein HrpW. Charkowski presents an analysis of the structure of the HrpW protein and compares features

of this protein to features of other hypersensitive response elicitor proteins, such as the HrpZ protein of *Pseudomonas syringae*. Charkowski, however, fails to teach or suggest an isolated protein or polypeptide as claimed. As evidence that HrpW is distinct of HopPtoA and HopPtoA2, applicants note the previously submitted alignment between *hrpW* and *hopPtoA* (showing ~48% identity) which was attached as Exhibit C to the response filed April 17, 2003.

The physical map of the DNA region around *hrpW* in *Pseudomonas syringae* pv. tomato is shown in Figure 1A of Charkowski to contain several putative open reading frames. All of these regions, designated as regions II, IV, and VI in Figure 1A of Charkowski, were identified solely by the presence of a putative  $\sigma^{54}$  promoter. Charkowski does not report the sequence of any of these regions, let alone identify encoded proteins in isolated form. It appears that Charkowski was cited by the U.S. Patent and Trademark Office ("PTO") because region VI as shown in Figure 1A of Charkowski corresponds to a portion of open reading frame 5 of Figure 3 in the present application, which encodes HopPtoA (SEQ ID NO: 7). However, as noted above, Charkowski does not identify the nucleotide sequence of region VI let alone the encoded protein in isolated form.


The alignment provided by the PTO actually compares SEQ ID NO: 7 of the present invention to SEQ ID NO: 66 of the present invention. (This alignment corresponds with the alignment supplied as an attachment to the December 4, 2002, response to the restriction requirement.) Charkowski fails to identify either of these proteins or their encoding nucleic acids.

For these reasons, the rejection of claims 7-9 and 38-45 as anticipated by Charkowski is improper and should be withdrawn.

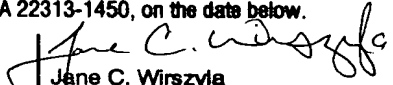
In view of all of the foregoing, applicants submit that this case is in condition for allowance and such allowance is earnestly solicited.

Respectfully submitted,

Date: March 18, 2004

  
Edwin V. Merkel  
Registration No. 40,087

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3/18/04	
Date	Jane C. Wirszyka